



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200924056

UIL No. 408.03-00

Legend:

MAR 16 2009

Individual A =

Individual B =

IRA X =

SE:T:EP:RA:T4

Amount A =

State E =

Date 1 =

Date 2 =

Date 3 =

Dear:

This is in response to a letter dated April 4, 2008, supplemented by correspondence dated June 3, 2008, June 12, 2008, December 17, 2008 and January 5, 2009, in which a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code") is requested.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Individual A, now deceased, received a distribution of Amount A from IRA X. On behalf of Individual A you assert that the failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to his medical condition and treatments, including hospitalizations during the 60-day period, which impaired his ability to timely roll over Amount A. It is further represented that Amount A has not been used for any other purpose.

Individual A, a resident of State E, whose date of birth is Date 1, owned IRA X. On Date 2, Individual A withdrew Amount A from IRA X. Individual A intended to accomplish a timely rollover, but during the 60 day period he was undergoing medical treatment for a severe and life threatening medical condition.

He was also hospitalized with complications several times during the 60 day period, and suffered from memory and hearing loss as a result of his medical condition and treatment. Documentation submitted with this letter ruling request is consistent with these representations.

Individual A's death occurred on Date 3. Individual B now seeks the waiver of the 60-day rollover requirement in her capacity as executor of Individual A's estate.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60 day rollover requirement contained in section 408(d)(3) of the Code, with respect to the distribution of Amount A from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) does not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information and documentation submitted is consistent with the assertion that Individual A's failure to accomplish a timely rollover was due to his medical condition and treatments during the 60-day rollover period, including hospitalization, which impaired his ability to timely rollover Amount A.

Therefore, subject to the restrictions noted below, pursuant to section 408(d)(3) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. The estate of Individual A is granted a period of 60 days from the issuance of this ruling letter to make a rollover contribution of an amount equal to Amount A, less amounts required to be distributed by section 401(a)(9) of the Code, into an IRA set up and maintained in the name of Individual A (deceased). Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the amount deposited into another IRA will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

The Service notes that the rollover IRA into which the amount referenced above will be contributed will not have a "designated beneficiary" as that term is defined in section 401(a)(9) of the Code. Thus, the Code section 401(a)(9) distribution period with respect to the rollover IRA will be that applicable to an IRA owner who had reached his required beginning date and died without designating a beneficiary of his IRA.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

This ruling assumes that Individual B's action in this instance are taken pursuant to her represented authority as Executrix of Individual A's estate and that the Rollover IRA set up in Individual A's name will be in accordance with the laws of State E.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact ***, I.D. No. ***, at (202) *** or (202) *** (FAX). Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Donzell H. Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose